FEB 17 2005

No. 04-953

In The
Supreme Court of the United States

PAUL E. WABEKE,

Petitioner,

v.

ANDREW J. MULDER,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. WHETHER THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN LACKED JURISDICTION UNDER THE *ROOKER-FELDMAN* DOCTRINE TO REVIEW A STATE COURT'S ORDER IMPOSING SANCTIONS ON A LITIGANT AFTER HE HAD FILED NUMEROUS FRIVOLOUS LAWSUITS AGAINST MANY OF THE SAME PARTIES?

II. WHETHER THIS COURT SHOULD REVERSE THE LONG-STANDING *ROOKER-FELDMAN* DOCTRINE WHICH HAS BEEN UNIFORMLY APPLIED TO DENY THE UNITED STATES DISTRICT COURT'S JURISDICTION TO REVIEW STATE COURT DECISIONS?

III. WHETHER THE PETITIONER'S COMPLAINT REGARDING THE STATE COURT IMPOSING SANCTIONS AGAINST HIM IS "INEXTRICABLY INTERTWINED" WITH THE STATE COURT DETERMINATION SO THAT ANY FEDERAL CLAIMS COULD ONLY SUCCEED TO THE EXTENT THE STATE COURT WRONGLY DECIDED THE ISSUES BEFORE IT?

IV. WHETHER A FEDERAL COURT (WHICH DOES NOT HAVE JURISDICTION OVER A MATTER AND WHEN QUALIFIED IMMUNITY APPLIES) CAN IMPOSE LIABILITY ON AN ATTORNEY FOR ARGUMENTS MADE IN STATE COURT?

PARTIES TO THE PROCEEDINGS

PETITIONER

Petitioner is a resident of the City of Holland. Since 1979, he has filed at least 19 lawsuits against the City of Holland, its officials, and others (including Respondent Andrew J. Mulder, the City Attorney for the City of Holland). Petitioner has not prevailed in any of these lawsuits and has been sanctioned for filing frivolous lawsuits.

RESPONDENT

Respondent is an attorney licensed to practice in Michigan and has been appointed as the City Attorney or Deputy City Attorney for the City of Holland for over 29 years.

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OPINIONS BELOW

Respondent agrees with the statement of the opinions below by the Petitioner.

STATEMENT OF JURISDICTION

Petitioner claims that this Court should exercise jurisdiction in this case under 28 U.S.C. § 1254 which provides:

> "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after a rendition of judgment or decree;
>
> (2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification, the Supreme Court may give binding instructions or require the entire record to be sent up for a decision of the entire matter in controversy."

As discussed more completely in the Argument section, the *Rooker-Feldman* doctrine provides that federal district courts do not have jurisdiction to engage in appellate review of state court determinations. Petitioner raised his underlying legal issues with the Michigan Court of Appeals on appeal from the Ottawa County Circuit Court. The Michigan Court of Appeals decided these issues. Petitioner now attempts to have a federal district court review the Michigan Court of Appeals' decision in an appellate capacity. The *Rooker-Feldman* doctrine precludes a federal district court from exercising jurisdiction in this capacity. As a result, this Court should not grant Petitioner's Petition for Writ of Certiorari.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Respondent merely refers to statutes and constitutional provisions that are already provided in full text in Petitioner's Petition for Writ of Certiorari. As a result, no additional statutes and constitutional provisions have been provided.

STATEMENT OF THE CASE

Since 1979, Petitioner has filed at least 19 lawsuits against the City of Holland, its officials, and others (including Respondent Andrew J. Mulder, the City Attorney for the City of Holland).[1] This petition for certiorari stems from Petitioner's federal lawsuit that sought to overturn injunctions that were entered in the Ottawa County and Allegan County Circuit Courts in Michigan.

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[1] The Honorable David W. McKeague noted Petitioner's "prolific litigation activities" in the lower court's opinion. Judge McKeague quoted a state court of appeals opinion indicating that Petitioner filed 17 suits as of 1999. Judge McKeague also stated as follows:

> "Plaintiff's prolific litigation activities included multiple lawsuits in this court. See *Wabake v. Maatman, et al.*, No. 1:91-cv-355 (W.D. Mich. May 30, 1991), aff'd, No. 91-1800, 1992 WL 58977 at *1 (6th Cir. Mar. 26, 1992) (*Res Judicata* barred Plaintiff's attempt to assert a cause of action arising out of ten state court lawsuits and seeking $11,000,000 in damages, declaratory relief, and a full-page written apology from Defendants to be printed in the local newspaper, (*cert. denied*, 506 U.S. 1072 [1993]); *Wabeke v. Mulder*, No. 1:92-cv-200 (W.D. Mich. Apr. 22, 1994) (dismissing plaintiff's complaint for failure to state a claim); *Wabeke v. Mulder, et al.*, 4:95-cv-127 (W.D. Mich. Aug. 25, 1995); granting defendants motion to dismiss (aff'd, No. 95-2099, 1996 WL 571302 [6th Cir. Oct. 4, 1996]); affirming dismissal of plaintiff's claims that Judge Bosman and City Attorney Mulder have conspired to deprive Plaintiff of due process of law in his state court suit against the City of Holland as barred by the *Rooker-Feldman* doctrine."

See Western District of Michigan's August 18, 2003 opinion and Respondent's Appendix at App. 16.

On July 8, 1997, Petitioner filed a lawsuit against the City of Holland in Michigan's Ottawa County Circuit Court relating to the expenditure of public monies on property owned by the City of Holland called "Windmill Island." The Ottawa County Circuit Court dismissed Petitioner's complaint and entered an order limiting his ability to file future litigation unless the complaint complied with M.C.R. 2.114(D) relating to the mandatory certification of law and fact before a lawsuit is filed in Michigan.[2] The order of the Honorable Calvin L. Bosman provides:

> "A permanent injunction is hereby issued precluding the Ottawa County Clerk from accepting any litigation filed by Plaintiff against Defendant City of Holland, any of its officials or any of its agents who have acted in their capacity as agents or officials for the City of Holland until the complaint of the Plaintiff has been reviewed by a Circuit Judge for the County of Ottawa for compliance with M.C.R. 2.114(D) and upon receipt or evidence of a receipt to the Ottawa County Clerk evidencing payment of all costs in any proceeding previously imposed against the Plaintiff and in favor of the Defendant. ***Specifically exempted from this permanent injunction is any cause of action by the Plaintiff which cites a personal injury to the Plaintiff or to any of his property.***" (Emphasis added.)

See p. 2 of Judge Bosman's October 13, 1997 judgment and Respondent's Appendix at App. 10-11.

Contrary to Petitioner's claims, this injunction does not prohibit him from filing any lawsuits against the City of Holland or its officials or agents. Instead, it merely

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[2] M.C.R. 2.114(D) requires that the party filing a pleading in state court sign it verifying that it is well grounded in fact, warranted by law, and it is not for an improper purpose. See Respondent's Appendix at App. 37-38. M.C.R. 2.114(E) provides that the state court may impose any sanctions that it deems appropriate for a violation of M.C.R. 2.114(D) other than punitive damages.

requires that the complaint be merited in fact and law and not be for an improper purpose as required by M.C.R. 2.114(D). The injunctive order merely requires Petitioner to comply with the same standard imposed on all litigants in Michigan. Further, the order imposes no limitations on the Petitioner's ability to file suit against the City or any of its officials for personal injury or property damage.

Petitioner sought review of the Ottawa County Circuit Court decision in the Michigan Court of Appeals. Petitioner raised his constitutional issues with the Ottawa County injunctive order. In question #2 of his brief on appeal, he stated:

> "Since the XIVth Amendment to the U.S. Constitution guarantees the citizens the right to have due process of law, was it proper and legal for a permanent injunction to be placed against the Plaintiff/Appellant, which would preclude the Ottawa County Clerk to file any litigation without a complaint first being first reviewed by a Circuit Judge?"

See Appellant's brief, and Respondent's Appendix at App. 5. In an unpublished opinion, the Michigan Court of Appeals affirmed the Ottawa County Circuit Court's decision and stated:

> "The trial court did not clearly err in determining that sanctions were warranted, and did not abuse its discretion by imposing costs in the amount of $500.00 and by enjoining the Circuit Court Clerk from accepting any further pleadings from Plaintiff without prior approval from a Circuit Court Judge. The trial court found that Plaintiff signed the instant complaint in violation of M.C.R. 2.114(D). The suit was the 17th action filed by Plaintiff against Defendant and other parties since 1979. All previous actions were dismissed. Sanctions were imposed in several cases; however, Plaintiff did not pay as ordered."

See *Wabeke v. City of Holland*, 1999 WL 33453855 (1999) and Respondent's Appendix at App. 30. Equally as important, the Michigan Court of Appeals held that the Petitioner

was afforded due process in connection with the imposition of sanctions in its holding that: "Plaintiff was afforded due process in connection with the imposition of sanctions. See *People v. Herrara* (on remand), 204 Mich. App. 333, 339; 514 N.W.2d 543 (1994)." See *Id.* at App. 30. The Court concluded by finding that: "Plaintiff's documented history of filing frivolous actions and ignoring orders warranted imposition of sanctions designed to prevent such actions in the future."

Under M.C.R. 7.301, Petitioner had a right to apply for leave to appeal with the Michigan Supreme Court. However, Petitioner failed to avail himself of this opportunity. If he had done so, Petitioner could have subsequently appealed to this Court for a determination on these issues. Rather than following this process, Petitioner admits that:

> "because the City of Holland covers parts of two counties (Ottawa and Allegan), Mr. Wabeke was able to file a subsequent lawsuit against the City of Holland in Allegan County over the new issue and ***evade*** the Ottawa Co. permanent injunction." (Emphasis added.)

See p. 6 of Petitioner's Petition for Writ of Certiorari.

On March 25, 2002, Petitioner filed another lawsuit (this time in Allegan County) against the City of Holland and its officials challenging expenditures to redevelop a large public park abutting Lake Macatawa commonly known as "Kollen Park." The Honorable Harry A. Beach of the Allegan County Circuit Court dismissed the action, determined it was frivolous, and granted an injunction on the same terms as the Ottawa County Circuit Court. It provides:

> "That a permanent injunction is hereby issued precluding the Allegan County Clerk from accepting any litigation filed by the Plaintiff against the Defendant City of Holland, any of its officials or any of its agents who have acted in the capacity as agents or officials for the City of Holland until the Complaint of the Plaintiff has been reviewed by the presiding Judge for the County of Allegan for compliance with M.C.R.

> 2.114(D) and upon receipt or evidence of a receipt to the Allegan County Clerk evidencing payment of all costs in any proceedings previously imposed against the Plaintiff and in favor of the Defendant. ***Specifically exempted from this permanent injunction is any cause of action by the Plaintiff which cites a personal injury arising from the tortuous conduct of the Defendant, its officials or agents, which results in personal injury to the Plaintiff himself or any of his property.***" (Emphasis added.)

See Judge Beach's May 17, 2002 judgment and Respondent's Appendix at App. 40.

The Allegan County Circuit Court also assessed costs of $500.00 against the Petitioner.

Petitioner had a right to appeal this judgment to the Michigan Court of Appeals. M.C.R. 7.203. He also had a right to request leave to appeal from the Michigan Supreme Court. M.C.R. 7.301. Likewise, he could have availed himself of petitioning this Court to hear these issues on a writ of certiorari. Notwithstanding, Petitioner did not avail himself of any of these opportunities.

Instead, Petitioner filed another lawsuit in the Western District of Michigan Federal Court on April 3, 2003.[3]

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[3] This is not the first time that Petitioner has engaged in "forum shopping." Petitioner filed a lawsuit against the City of Holland in Ottawa County Circuit Court, Circuit Court No. 91-15029-CZ. The Honorable Calvin L. Bosman ordered that Petitioner post a bond and security for costs he had not paid. Petitioner appealed and subsequently filed suit in the Federal Court for the Western District of Michigan against the Respondent claiming a violation of his due process rights. The Honorable Benjamin F. Gibson dismissed the lawsuit based on the *Younger* doctrine. Later, Judge Bosman dismissed the suit in Ottawa County Circuit Court because Petitioner failed to past the required bond. Petitioner again filed suit in the Western District of Michigan claiming that now Judge Bosman and Respondent conspired to deprive him of his constitutional rights. The Honorable Douglas N. Hillman dismissed the case. See August 25, 1994 opinion and Respondent's Appendix at App. 20-27. The Sixth Circuit affirmed the lower court on the basis that the *Rooker-Feldman* doctrine prevented the district court

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This complaint was filed against City Attorney Andrew J. Mulder and Judges Calvin L. Bosman, and Harry A. Beach. On May 15, 2003, the Judges for Ottawa and Allegan County filed a motion to dismiss and the Honorable David W. McKeague granted the motion.[4]

On May 20, 2003, Respondent filed a motion to dismiss and the Honorable David W. McKeague likewise granted the motion. See Honorable David W. McKeague's Memorandum Opinion dated August 16, 2003, and Respondent's Appendix at App. 12-19. In reaching this decision, Judge McKeague reasoned that the federal courts have limited jurisdiction and that the burden rests on the party seeking to establish jurisdiction. In doing so, he applied the *Rooker-Feldman* doctrine in holding that the court lacks jurisdiction to review state court's decisions that are "inextricably intertwined."

After the present case was dismissed, Petitioner filed an appeal with the Sixth Circuit. The Sixth Circuit affirmed the Honorable David W. McKeague's decision holding that it did not have jurisdiction based upon the *Rooker-Feldman* doctrine. See opinion of Sixth Circuit dated June 17, 2004, and Respondent's Appendix at App. 31-33.

Subsequently, Petitioner filed a petition for writ of certiorari with this Court. He claims that the *Rooker-Feldman* doctrine violates the First Amendment, the separation of powers doctrine, and the supremacy clause.[5]

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from exercising appellate jurisdiction and reviewing the Michigan Court judgments. See October 4, 1996 order and Respondent's Appendix at App. 34-36.

[4] Ironically, Petitioner even agreed to this dismissal before it was entered by sending a letter to the court.

[5] It is also ironic that Petitioner believes that his First Amendment rights have been violated. He even admits in his petition that he has been "critical in official town meetings." See p. 14 of Petitioner's Petition for Writ of Certiorari. In addition, the City of Holland has never prohibited him from speaking at these meetings. Also, he ran for Mayor of the City of Holland in 2004, and was not elected.

This is a straight-forward jurisdictional issue. The *Rooker-Feldman* doctrine is a long-standing and important element of federal jurisprudence. Petitioner is attempting to evade this jurisdictional doctrine as he did previously with filing in the Allegan County Circuit Court.[6]

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[6] In his petition, Petitioner claims that the Michigan Courts are predisposed to decide against him and other pro se litigants. However, he fails to acknowledge that numerous judges (both state and federal) have decided against him, including:

- Honorable Calvin L. Bosman, most recently in the October 13, 1997 judgment;
- Honorable Harry A. Beach, most recently in the May 17, 2002 judgment;
- Honorable David W. McKeague, most recently in the August 18, 2003 opinion;
- McDonald;
- Honorable Karen Fort Hood, most recently in the decision affirming the Ottawa County Circuit Court's injunction;
- Honorable Martin M. Doctoroff, most recently in the decision affirming the Ottawa County Circuit Court's injunction;
- Honorable Donald S. Owens, most recently affirming the Ingham County Circuit Court's dismissal of Petitioner's mandamus action against 58th District Judges;
- Honorable William B. Murphy, most recently affirming the Ingham County Circuit Court's dismissal of Petitioner's mandamus action against 58th District Judges;
- Honorable Helen N. White, most recently affirming the Ingham County Circuit Court's dismissal of Petitioner's mandamus action against 58th District Judges;
- Honorable Benjamin F. Gibson, dismissing Petitioner's $11,000,000 lawsuit;
- Honorable Douglas N. Hillman, granting summary judgment to Petitioner's complaint;
- Honorable Cornelia C. Kennedy, in 1996 affirming the Western District of Michigan's decision denying jurisdiction;

(Continued on following page)

ARGUMENT

I. STANDARD FOR GRANTING REVIEW OF PETITION FOR CERTIORARI.

Rule 10 of this Court's rules provides the standards governing the review on certiorari. It provides:

> "Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only for ***compelling reasons***. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character or reasons the Court considers:
>
> (a) A United States Court of Appeals has entered ***a decision in conflict with the decision of another United States Court of Appeals*** on the same important matter; has decided an important federal question in a way that ***conflicts with the decision by a state court of last resort***; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) A state court of last resort has decided an important federal question in a way that

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- Honorable Martha Craig Daughtery, in 1996 affirming the Western District of Michigan's decision denying jurisdiction;
- Honorable Joseph H. Weis, Jr., in 1996 affirming the Western District of Michigan's decision denying jurisdiction;
- Honorable Robert Krupansky, most recently affirming the Western District of Michigan's decision denying jurisdiction;
- Honorable R. Guy Cole, Jr., most recently affirming the Western District of Michigan's decision denying jurisdiction;
- Honorable Julian A. Cook, Jr., most recently affirming the Western District of Michigan's decision denying jurisdiction.

conflicts with the decision of another state court of last resort or of the United States Court of Appeals;

(c) A state court or a United States Court of Appeals has decided an important ***question of federal law that has not been, but should be, settled by this Court***, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." (Emphasis added.)

The Petitioner apparently seeks certiorari under Rule 10(a) and (c). He erroneously claims that there is a conflict in the circuits (regarding the long-established *Rooker-Feldman* doctrine) and that this Court's decisions are conflicting. The Petitioner is wrong on both accounts. Also, Petitioner is requesting that this Court overturn a doctrine that has been established and followed consistently since 1923. The egregious facts in this case support the sound wisdom and policy of the *Rooker-Feldman* doctrine.[7]

II. THERE IS NO CONFLICT IN THE CIRCUITS AND THIS COURT HAS NOT APPLIED THE *ROOKER-FELDMAN* DOCTRINE IN A CONTRADICTORY MANNER.

A. The *Rooker-Feldman* doctrine has been an important element of federal jurisprudence since 1923.

Petitioner has inappropriately framed the issue on appeal as a substantive one (i.e., a violation of the First

[7] Petitioner also raises issues related to access to the courts. It is not necessary for this Court to review these issues because jurisdiction is not proper. However, Respondent has also addressed these issues in the event there is any merit to Petitioner's jurisdictional arguments.

Amendment, the supremacy clause, etc.) as opposed to what is clearly one of jurisdiction. The Honorable David W. McKeague, District Judge of the Western District of Michigan and the Sixth Circuit, properly addressed this issue. Judge McKeague stated:

> "Federal courts are courts of limited jurisdiction which may exercise only those powers authorized by Constitution and statute." *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994). Therefore, "[i]t is to be presumed that a cause lies outside the limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting the jurisdiction." *Kokkonen*, 511 U.S. at 377 (citations omitted). "The first and fundamental question presented by every case brought to the Federal District Court is whether it has jurisdiction to hear a case, even when the parties concede or do not raise or address the issue." See *Bender v. Williamsport Area School District*, 475 U.S. 534, 106 S. Ct. 1326, 89 L. Ed. 2d 501 (1986). "Quite aside from whether the parties raised jurisdictional issues themselves – or even attempt to consent or agree to federal jurisdiction – federal courts have an independent obligation to investigate and police the boundaries of their jurisdiction. *Douglas v. E. G. Baldwin Association, Inc.*, 150 F.3d 604, 606 (6th Cir. 1998)."

Both the District Court for the Western District of Michigan and the Sixth Circuit held that the *Rooker-Feldman* doctrine precluded jurisdiction in this case.[8] The Sixth Circuit stated:

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[8] The Sixth Circuit has developed a two-step inquiry for determining whether the *Rooker-Feldman* doctrine applies. *Catz v. Chalker*, 142 F.3d 279 (6th Cir. 1998). The first step examines whether the federal claim is "inextricably intertwined" with the claim asserted in the prior state court proceeding. *Id.* The Sixth Circuit stated that:

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> "Because Wabeke's complaint merely reflected his dissatisfaction with the permanent injunction issued by the state court regarding his filing a further litigation and essentially sought federal court review of the state court order, the *Rooker-Feldman* doctrine precludes the exercise of federal jurisdiction."

Wabeke v. Andrew Mulder, et al., Case No. 03-2235.

Petitioner attempts to undermine the application of the *Rooker-Feldman* doctrine as it has existed since 1923. As a result, it is important to review these fundamental cases. In *Rooker, et al. v. Fidelity Trust Co., et al.*, a lawsuit was filed in the Circuit Court of Indiana and was ultimately affirmed by the Indiana Supreme Court. 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923). Subsequently, a lawsuit filed in federal district court alleging violations of the contract clause, due process, and equal protection. On appeal before this Court, this Court analyzed whether the federal district court had jurisdiction over the matter. The Court reasoned that the federal district courts only have strictly original jurisdiction. Reviewing the Indiana State Supreme Court's decision would clearly amount to an "exercise of appellate jurisdiction." As a result, the federal district court did not have jurisdiction over the case.

This jurisdictional issue was also addressed in *District of Columbia Court of Appeals, et al. v. Feldman*, 460 U.S.

> "Under the [*Rooker-*]*Feldman* doctrine, the federal claim is inextricably intertwined with the state-court judgment if the federal claims succeed only to the extent that the state court wrongly decided the issues before it. Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state court judgment."

Catz v. Chalker, 142 F.3d 279 (6th Cir. 1998) quoting *Keene Corp. v. Cass*, 908 F.2d 293 at 296-297 (8th Cir. 1990). The second part to determine if the claim is a general challenge to the constitutionality of a state law or is merely based on an inappropriate application of the state law. See *Id.*

462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983). In this case, two applicants that applied to the bar for the District of Columbia were denied sitting for the bar examination. This was a decision of the District of Columbia State Court of Appeals. Subsequently, the applicants brought lawsuits in federal district court claiming that the denial was unconstitutional. After initially determining that the proceedings were judicial in nature, this Court analyzed whether the federal district court had jurisdiction over the matter. The Court ruled that the district courts did not have jurisdiction over the complaints. In footnote 16, the Court stated:

> "As we noted in *Atlantic Coast Line R. Co. v. Engineers*, 398 U.S. 281, 90 S. Ct. 1739, 26 L. Ed. 2d 234 (1970), lower federal courts possess no power whatsoever to sit in direct review of state court decisions." *Id.* at 296, 90 S. Ct. at 1748. "If the constitutional claims presented to a United States District Court are inextricably intertwined with the state court's denial in a judicial proceeding of a particular plaintiff's application for admission to the state bar, then the District Court is in essence being called upon to review the State Court's decision. This the District Court may not do. Moreover, the fact that we may not have jurisdiction to review a final state court judgment because of a petitioner's failure to raise his constitutional claims in state court does not mean that a United States District Court should have jurisdiction over the claims. By failing to raise his claims in state court, a plaintiff may forfeit his right to obtain review of the state court decision in any federal court. This result is immanently defensible on policy grounds. We have noted the competence of state courts to adjudicate federal constitutional claims. See *E.G. Sumner v. Mata*, 449 U.S. 539, 549, 101 S. Ct. 764, 770, 66 L. Ed. 2d 722 (1981); *Allen v. McCurry*, 449 U.S. 90, 105, 101 S. Ct. 411, 420, 66 L. Ed. 2d 308 (1980); *Swain v. Pressley*, 430 U.S. 372, 383, 97 S. Ct. 1224, 1230, 51 L. Ed. 2d

> 411 (1977). We also noted in *Cardinal* that one of the policies underlying the requirement that constitutional claims be raised in State Court as a prerequisite to our certiorari jurisdiction is a desirability of giving the State Court the first opportunity to consider a state statute or rule in light of federal constitutional arguments. A state court may give the statute a saving construction or response to those arguments."

Id. at 439.

B. This Court has not applied the *Rooker-Feldman* doctrine in a contradictory manner.

In an attempt to create conflict in this Court's opinions, Petitioner has misconstrued this Court's opinions. He cites to *Asarco, Inc. v. Kadish*, asserting this as a case in which this Court somehow inconsistently applied the *Rooker-Feldman* doctrine. 490 U.S. 605, 109 S. Ct. 2037, 104 L. Ed. 2d 696 (1989). In this case, taxpayers filed a lawsuit challenging a statute that permitted the State Land Department to lease minerals and school and trust lands at a flat royalty rate. The lawsuit was filed in Arizona State Court. Ultimately, the Arizona State Court ruled that the statute was unconstitutional. Some mineral lessee filed a petition for certiorari with this Court. This Court addressed whether jurisdiction was proper. In doing so, it analyzed whether the judgment was final, the parties had standing, and whether there was an adequate and independent state grounds for the decision. The *Rooker-Feldman* doctrine was discussed in the context of whether the plaintiffs had standing. In doing so, it cited to *Minnesota v. National Tea*, which stated that:

> "This Court is responsible for assuring 'that state courts will not be the final arbiter of important decisions under the Federal Constitution'. 309 U.S. 551, 557, 60 S. Ct. 676, 679, 84 L. Ed. 920 (1940)."

The Court stated further that it would be inappropriate to dismiss the case and require that it be refiled in federal court because it would be a partial inroad on the *Rooker-Feldman* doctrine.

Petitioner construes this to be an inconsistent application of the *Rooker-Feldman* doctrine. In fact, it is clearly the opposite. The Court clearly stated that the *Rooker-Feldman* doctrine would not demand that the appeal be dismissed. Ironically, Petitioner fails to recognize that the case in *Asarco* proceeded just as his state court appeal could have. It proceeded through the state courts and was subsequently appealed to this Court. In contrast, Petitioner failed to even appeal from the Michigan Court of Appeals to the Michigan Supreme Court. He also failed to then appeal to this Court as is required by the *Rooker-Feldman* doctrine. There is no inconsistency between what the *Rooker-Feldman* doctrine requires and what was held in *Asarco*.

C. There is no conflict in the circuits in applying the *Rooker-Feldman* doctrine.

Petitioner attempts to manufacture a conflict between the federal circuits in how the *Rooker-Feldman* doctrine has been applied. He cites to *Ellman v. Standard Federal Bank* as a case in which the Sixth Circuit applied the *Rooker-Feldman* doctrine. 46 Fed. Appx. 792 (6th Cir. 2002). In this case, Standard Federal Bank foreclosed on a number of loans and just prior to the expiration of the redemption period, the plaintiff filed a lawsuit in Michigan state court claiming that the Michigan foreclosure statutes violated due process. The parties were then able to reach a workout agreement. However, plaintiff fell out of compliance with the agreement and Standard Federal pursued a complaint for possession in Michigan state court. The state court issued a judgment of possession in favor of Standard Federal and the plaintiff unsuccessfully appealed before the Court of Appeals and the Michigan Supreme Court. Plaintiff did not seek certiorari to this Court under 28 U.S.C. § 1254.

After all of the state appeals were exhausted, he filed a suit in federal district court. The district court, and then on appeal, the Circuit Court of Appeals, determined that the *Rooker-Feldman* doctrine precluded the district court from exercising subject matter jurisdiction over the real property claims. The court stated that:

> "In short, if Ellsman wished to further challenge the defendant's refusal to accept his negotiated high bid for the Birmingham property, he should have filed for *certiorari* in the United States Supreme Court."

Id. at 797.

Petitioner also cites to *Thornblad v. Anderson* in his petition for writ of certiorari. 104 Fed. Appx. 610 (8th Cir. 2004). On appeal, the Eight Circuit likewise held that the *Rooker-Feldman* doctrine barred the federal complaint because the constitutional challenges had already been decided by the Minnesota state courts.

Finally, Petitioner cites to *Wexler v. Lepore*, 385 F.3d 1336 (11th Cir. 2004). In this case, the plaintiff filed two actions challenging the recount election system in fifteen of Florida's counties. The claims were based exclusively under Florida law. Subsequently, the plaintiff, along with other parties, filed a federal suit alleging violations of the U.S. Constitution. The court primarily discussed the application of the *Younger* doctrine, but did discuss the *Rooker-Feldman* doctrine in footnote 5. The court stated that no federal claims were litigated in the state court. In fact, the Florida Appellate Court stated that any attempt to amend the complaint to raise a "cognizable constitution claim would be futile." *Id.* at 1340. On this basis, the Eleventh Circuit held that the *Rooker-Feldman* doctrine did not bar the federal lawsuit.

Of the three cases cited, only *Wexler* did not apply the *Rooker-Feldman* doctrine. However, this does not mean that there is a conflict among the circuits. The Eleventh Circuit logically reasoned that because no federal constitutional claims were litigated that the plaintiff should not be precluded from raising them in a federal lawsuit. This is

consistent with this Court's decision in *England v. Louisiana State Board of Medical Examiners*, 373 U.S. 411, 84 S. Ct. 461, 11 L. Ed. 2d 440 (1964) when this Court stated:

> "There are fundamental objections to any conclusion that a litigant who has properly invoked the jurisdiction of a federal district court to consider federal constitutional claims can be compelled . . . to accept instead a state court's determination of those claims."

Id. at 415.

Respondent is not arguing that Petitioner is precluded from raising his claims under the *Rooker-Feldman* doctrine when they were *not* litigated in the state courts. In fact, they were litigated in the Michigan state courts. question #2 of Petitioner's statement of questions in the appeal before the Michigan Court of Appeals stated:

> "Since the XIV Amendment to the U.S. Constitution guarantees a citizen the right to have due process of law, was it proper and legal for a permanent injunction to be placed against the plaintiff/appellant which would preclude the Ottawa County Clerk to file any litigation without a complaint being first reviewed by a circuit judge."

See Respondent's Appendix at App. 5.

By Petitioner's own brief and admission, he raised the same issues in this case in the Michigan Court of Appeals. Likewise, the Michigan Court of Appeals held that the plaintiff was afforded due process. See *Wabeke v. City of Holland*, 1999 WL 33453855 (1999) and Respondent's Appendix at App. 28-30. As a result, the Court of Appeals addressed these issues and decided it in the appeal. There is no basis for Petitioner to now claim that he did not raise these issues with the Court of Appeals. Clearly, there is no conflict in the application of the *Rooker-Feldman* doctrine.

III. THE WESTERN DISTRICT OF MICHIGAN AND THE SIXTH CIRCUIT DID NOT DEPART FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER.

A. The *Rooker-Feldman* doctrine does not violate the supremacy clause.

Petitioner makes the unfounded statement that state courts are not required to follow and apply federal law. Petitioner's statement is clearly in error with well-established authority of this court. See *Howlett v. Rose*, 496 U.S. 356, 110 S. Ct. 2430, 110 L. Ed. 2d 332 (1990).

In *Howlett*, this Court succinctly explained the supremacy clause and its importance in relation to the states. It stated:

> "Federal law is enforceable in state courts not because Congress has determined that Federal Courts would otherwise be burdened or that State Courts might provide a more convenient forum – although both might well be true – but, because the Constitution and laws passed pursuant to it are much in the states and laws passed by the state legislature. The Supremacy Clause makes those laws 'the supreme Law of the Land,' and charges state courts with coordinating responsibility to enforce the law according to the regular modes of procedure. The laws of the United States are laws in the several states, and just as much bonding on the citizens and courts thereof as the state laws are . . . the two together form one system of juris prudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor are they treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent." *Claflin v. Houseman*, 93 U.S. 130, 136-137, 23 L. Ed. 833 (1876); *Minneapolis & St. Louis R.*

> *Co. v. Bombolis*, 241 U.S. 211, 222, 36 S. Ct. 595, 598, 60 L. Ed. 961 (1916)."

Id. at 367.

Petitioner's claims are based on hyperbole and the assumption that the state courts are somehow hostile to the federal courts and will not enforce federal rights. This is clearly contrary to established law. This Court has stated:

> "It has been asserted that the federal government is foreign to the state government; and that it must consequently be hostile to them. Such an opinion could not have resulted from a thorough investigation of the great principles which lie at the foundation of our system. The federal government is neither hostile to the state governments, nor is it hostile to them. It proceeds under the same people, and as much under their control as the state governments.
>
> Where, by the Constitution, the power of the legislation is exclusively vested in Congress, they legislate for the people of the union, and their acts are as binding as are the Constitutional enactments of the state legislature and the people of the state."

Id. at 367 citing *Worcester v. Georgia*, 6th Pet. 515, 571, 8 L. Ed. 483 (1832).

After setting forth these general principles, this Court in *Howlett* stated that one corollary of these principles is that a state court must address a federal issue when the parties in controversy are properly before it. *Douglas v. New York, N. H. & H. R. Co.*, 279 U.S. 377, 387-388, 49 S. Ct. 355, 356-357, 73 L. Ed. 747 (1929). Moreover, "the existence of the jurisdiction creates an implication of duty to exercise it." *Mondou v. New York, N. H. & H. R. Co.*, 223 U.S. 1, 58, 32 S. Ct. 169, 178, 56 L. Ed. 327 (1912). The Court in *Howlett* further stated:

> "To understand why this is so, one needs only to imagine a contrary system in which the Supremacy Clause operated as a constraint on the activity of

> State-Court Judges like that imposed on other state actors, rather than as a rule of decision. On that hypothesis, state courts would be subject to the ultimate superintendence of federal courts which would vacate judgments entered in violation of federal law, just as they might overturn unconstitutional state legislative or executive decisions. Federal courts would exercise a superior authority to enforce and apply the constitutional laws passed pursuant to it." See *Wechsler, The Appellate Jurisdiction of the Supreme Courts; Reflections on the Law and Logistics of Direct Review*, 34 Wash. & L. Rev. 1043, 1047 (1977). (Describing and rejecting alternative view of Supremacy Clause, as intrusive on state autonomy.) "The language of the Supremacy Clause – which directs that 'the Judges in every State shall be bound thereby, any Thing in the Constitution or laws of any State to the contrary notwithstanding' – and are cases confirm that state courts have the coordinate authority and the consummate responsibility to enforce the supreme law of the land. Early in our history, in support of the Courts' power of review over state courts, Justice Story anticipated that such courts 'in the exercise of their ordinary jurisdiction . . . would incidentally take cognizance of cases arising under the Constitution, the laws, and treaties of the United States. *Martin v. Hunter Lessee*, 1 Wheat., at 342 and would decide federal questions even when, pleaded in replication, they were necessary to the plaintiff's case."

Id. at 370.

The *Rooker-Feldman* doctrine emanates from this corollary because it provides that a federal court cannot entertain an original action alleging that a state court improperly applied a federal law or a provision of the constitution. It also predisposes that state courts presumptively have the obligation to apply federal law to a dispute before them and not deny a federal right in the absence of a valid excuse.

Petitioner's contentions fly in the face of these well-recognized principles between the federal and state courts. This Court should not undermine what has been clearly established law for nearly the past two centuries based upon sound legal and policy purposes.

B. The *Rooker-Feldman* doctrine does not violate the separation of powers doctrine.

Like much, if not all of the litigation which Petitioner has filed, Petitioner's argument in this proceeding is completely devoid of any basis in law. It is clear that this Court has appellate authority over the highest state courts. As a result, parties are not without a remedy when state courts inappropriately apply federal law. They have recourse by filing a petition for writ of certiorari with the U.S. Supreme Court after adjudication of an issue in the highest state court. There is no basis in law to claim that state courts can freely and without any accountability apply incorrectly federal law.

Petitioner's argument also misunderstands the separation of powers doctrine. As cited by the Petitioner, this Court in *Martin v. Hunter-Lessee*, stated:

> "The object of the constitution was to establish three great departments of government, the legislative, the executive, and the judicial departments. The first was to pass laws, the second to approve and execute them, and the third to expound and enforce them."

14 U.S. 304, 4 L. Ed. 97 (1816). The separation of powers doctrine is a principle that applies to and between the three departments of the federal government. A primary responsibility of this Court is to balance the peoples' protection against the abuse of power by other branches of government. *United Public Workers v. Mitchell*, 330 U.S. 75, 67 S. Ct. 556, 91 L. Ed. 754 (1947). The *Rooker-Feldman* doctrine does not preclude the federal courts from protecting against the abuse of power by other federal branches. In addition, it does not give state courts carte blanche to apply federal law that is contrary to the

U.S. Constitution. The appellate jurisdiction of this Court assures people that the state courts will properly apply federal law. Petitioner did not avail himself of this right and is now asking this Court to circumvent this process without any basis.

C. The *Rooker-Feldman* doctrine does not violate the First Amendment.

Petitioner is asking that this Court carve out the "Wabeke" exception to this long-standing doctrine for the First Amendment. There is no judicial authority for this proposition. Moreover, there is no analytical basis for distinguishing why one constitutional right should be given priority over all others. Petitioner is free to exercise his First Amendment rights in numerous ways (i.e., writing letters to the editorial criticizing the City of Holland; attending at speaking at City Council meetings, running for office, etc.).[9] In fact, the Petitioner has done and continues to exercise his First Amendment rights in this manner. The *Rooker-Feldman* doctrine does not undermine Petitioner's rights. Instead, accepting Petitioner's spurious claims which have been meticulously reviewed by a multitude of judges and courts would have the effect of substantially undermining the basis of the doctrine and weakening its import. This would have significant implications for the relationship between the federal and state courts.

As indicated previously, this Court has recognized the competence of state courts to adjudicate federal constitutional claims. See also Argument IV of Respondent in this Argument section. Petitioner is requesting that this line of

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[9] He is also free to file suit in state court. The ***only*** limitation is that if the suit is against the City of Holland or its officials or employees (and does not allege personal injury or property damage), he must demonstrate to a judge that it is not frivolous. As noted by Judge McKeague, no one has a right to pursue frivolous litigation. See Respondent's Appendix at App. 17.

cases be overruled or substantially curtailed. There is no merit to this claim.

IV. EVEN IF THE *ROOKER-FELDMAN* DOCTRINE DOES NOT APPLY, THERE WAS HARMLESS ERROR IN THE LOWER COURT'S DECISIONS BECAUSE FEDERAL COURTS HAVE CONSISTENTLY HELD (AND IN A WAY THAT DOES NOT CONFLICT WITH THIS COURT'S OPINION) THAT THE RIGHT OF ACCESS TO THE JUDICIAL SYSTEM IS NOT ABSOLUTE AND MAY BE SUBJECT TO REASONABLE SAFEGUARDS INCLUDING THE AUTHORITY TO AWARD SANCTIONS AND TO REQUIRE THAT THERE BE MERIT AND LAW IN FACT TO PURSUE A LAWSUIT.

This Court has stated:

> "Every paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution's limited resources. A part of the Court's responsibility is to see that these resources are allocated in a way that promotes the interests of justice."

In re MacDonald, 489 U.S. 180, 184, 109 S. Ct. 993, 103 L. Ed. 2d 158 (1989). In that case, this Court held that it is within the inherent powers of the court to apply appropriate restrictions on a litigant's ability to commence abusive litigation in forma pauperis." See *Id.*

Many courts of appeals have addressed this right of access to the courts. The D.C. Circuit has held that the right of access to the courts is neither absolute nor unconditional. *In re Green*, 669 F.2d 779 (D.C. Cir. 1981). Moreover, the Tenth Circuit has held that there is no constitutional right of access to the court to prosecute an action that is frivolous or malicious. *Phillips v. Karey*, 638 F.2d 207 (10th Cir.), cert. denied, 450 U.S. 985, 101 S. Ct. 1524, 67 L. Ed. 2d 821 (1981). The Fifth Circuit has stated that "no one, rich or poor, is entitled to abuse the judicial

process." *Hardwick v. Brinson*, 523 F.2d 798, 800 (5th Cir. 1975). The Tenth Circuit has stated as follows:

> "There is a strong precedent establishing the inherent power of federal courts to regulate the activity of abusive litigants by imposing carefully tailored restrictions under the appropriate circumstances."

Kotner v. Hopkins, 795 F.2d 900 (10th Cir. 1986).

There are a number of cases that have followed this precedent. The Tenth Circuit has held that numerous "onerous conditions" may be imposed on the litigant as long as they are designed to assist the district court in curbing the particular abusive behavior involved. *Carter v. United States*, 733 F.2d 735 (10th Cir. 1984), cert. denied, 469 U.S. 1161, 105 S. Ct. 915, 83 L. Ed. 2d 928 (1985). In addition, the D.C. Circuit required a litigant to certify that the claims advanced have never been raised before. *In re Green*, 669 F.2d 779 (D.C. Cir. 1981). In addition, the Fourth Circuit has upheld a prefiling review and the denial of a leave to file an in forma pauperis except upon a showing of good cause. *Graham v. Riddle,* 554 F.2d 133 (4th Cir. 1977). The Seventh Circuit upheld court review and approval before acceptance of any proposed litigation. *Sassower v. American Bar Association*, 33 F.3d 733 (7th Cir. 1994). The Seventh Circuit also required the plaintiffs to pay all costs and attorney fees imposed and to post a bond before allowing them to file another lawsuit against the defendants. *United States ex rel. Verdone v. Circuit Court for Taylor County*, 73 F.3d 669 (7th Cir. 1995). The Sixth Circuit upheld an injunction imposing prefiling restrictions. *Callihan v. Kentucky*, No. 01-6555 (6th Cir. June 12, 2002). Likewise, the Sixth Circuit also firmed a court order requiring the plaintiff to file a $25,000 cash bond and other restrictions on any future actions against the defendants. *Stewart v. Fleet Financial*, 2000 WL 1176881 (6th Cir. August 10, 2000).

Based on this inherent authority, the Ottawa and Allegan County Circuit Courts have placed reasonable and limited restrictions on Petitioner's right to commence lawsuits

against the City of Holland, and any of its officials (including the Respondent).[10] Petitioner's frivolous lawsuits over the years have forced the City of Holland to incur significant attorney fees. It is reasonable that Petitioner be required to pay some of these fees as a condition to filing any future litigation. Likewise, the limitation on any

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[10] The order of the Honorable Calvin L. Bosman provides:

> "A permanent injunction is hereby issued precluding the Ottawa County Clerk from accepting any litigation filed by Plaintiff against Defendant City of Holland, any of its officials or any of its agents who have acted in their capacity as agents or officials for the City of Holland until the complaint of the Plaintiff has been reviewed by a Circuit Judge for the County of Ottawa for compliance with M.C.R. 2.114(D) and upon receipt or evidence of a receipt to the Ottawa County Clerk evidencing payment of all costs in any proceeding previously imposed against the Plaintiff and in favor of the Defendant. Specifically exempted from this permanent injunction is any cause of action by the Plaintiff which cites a personal injury to the Plaintiff or to any of his property."

See Judge Bosman's October 13, 1997 judgment and Respondent's Appendix at App. 10-11.

The Honorable Harry A. Beach of the Allegan County Circuit Court entered a judgment against Petitioner that provides:

> "That a permanent injunction is hereby issued precluding the Allegan County Clerk from accepting any litigation filed by the Plaintiff against the Defendant City of Holland, any of its officials or any of its agents who have acted in the capacity as agents or officials for the City of Holland until the Complaint of the Plaintiff has been reviewed by the presiding Judge for the County of Allegan for compliance with M.C.R. 2.114(D) and upon receipt or evidence of a receipt to the Allegan County Clerk evidencing payment of all costs in any proceedings previously imposed against the Plaintiff and in favor of the Defendant. Specifically exempted from this permanent injunction is any cause of action by the Plaintiff which cites a personal injury arising from the tortuous conduct of the Defendant, its officials or agents, which results in personal injury to the Plaintiff himself or any of his property."

See Judge Beach's May 17, 2002 judgment and Respondent's Appendix at App. 40.

future lawsuit having merit in law and fact is merely a requirement of the state court rules and is the equivalent to Rule 11 under the Federal Rules of Civil Procedure. The state court orders provide exceptions to preserve Petitioner's rights such as any personal property or personal injury claims. Contrary to Petitioner's contentions, this will not "chill" his right to access the courts. Rather, the injunctions will require that Petitioner have a valid basis before filing against the City and its officials and will assist in the preserving of judicial resources. This is a standard which is required of all litigants which should include and not exclude the Petitioner. Moreover, Petitioner has an unlimited right to file a lawsuit against the city or its officials relating to any personal injury or property damage.

V. EVEN IF THE *ROOKER-FELDMAN* DOCTRINE DOES NOT APPLY, THERE WAS HARMLESS ERROR IN THE LOWER COURT'S DECISIONS BECAUSE RESPONDENT IS ENTITLED TO QUALIFIED IMMUNITY AS CITY ATTORNEY FOR THE CITY OF HOLLAND.

This Court has held that private defendants, such as doctors or lawyers, who perform services at the behest of the government are entitled to governmental immunity. See *Richardson v. McKnight*, 521 U.S. 399, 138 L. Ed. 2d 540, 117 S. Ct. 2100 (1997). In addition, the Sixth Circuit has held that a law firm hired by the City of Louisville to serve as outside counsel was entitled to qualified immunity under Section 1983 claims. *Cullinan v. Abramson*, 128 F.3d 301 (6th Cir. 1997), cert. denied, 523 U.S. 1094, 140 L. Ed. 2d 792, 118 S. Ct. 1560 (1998).

In this case, Respondent was clearly acting in his capacity as City Attorney for the City of Holland. As is the case with all city attorneys in the State of Michigan, the city attorney position is not elected. Rather, it is an appointed position by the governing body for the municipality. Moreover, Respondent's defense of Petitioner's complaint in both the Ottawa and Allegan County Circuit

Courts was within the scope of his duties as City Attorney for the City of Holland. As a result, the qualified immunity doctrine applies.

The purpose of the qualified immunity doctrine recognizes that substantial costs can be incurred through litigation over the subjected good faith of government officials. *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982). In addition, this Court has stated:

> "Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory and constitutional rights of which a reasonable person would have known."

Id. at 818.

In addition, the statutory constitutional rights must have been "so clearly established when the acts were committed that any officer in the defendant's position, measured objectively, would have clearly understood that he was under an affirmative duty to refrain from such conduct." *Dominque v. Telb*, 831 F.2d 673, 676 (6th Cir. 1987). The objective reasonableness standard "focuses on whether defendants reasonably could have thought that their actions were consistent with the rights that plaintiff's claims have been violated." *Walton v. City of Southfield*, 995 F.2d 1331, 1336 (6th Cir. 1993).

Petitioner alleges that Respondent violated his due process rights under the Fourteenth Amendment of the U.S. Constitution when the state circuit courts granted the injunctive relief sought by the Respondent. There can be no doubt that Respondent was acting in his official capacity when he was representing the City of Holland in state court litigation.

Secondly, Respondent finds no authority to indicate that injunctive relief, of the limited type granted by the state circuit courts, is a violation of Petitioner's due

process rights.[11] More importantly, there is no authority to indicate that constitutional rights in this area have been so clearly established as to clearly prohibit injunctive relief of the type granted by the state circuit courts. There simply is no authority to indicate that Petitioner has an unabated and unqualified constitutional right to file frivolous actions. Absent clearly developed constitutional law in this area, qualified immunity applies.

In a similar case, a prisoner filed a law suit against the county, a circuit court, the judge for the circuit court, and the circuit court administrator, claiming that they deprived the plaintiff of his rights to access to the courts, due process, equal protection, and conspired to deprive him of his rights. *Fields v. County of Lapeer*, 2000 U.S. App. LEXIS 29182 (6th Cir. 2000). The allegations arose from the court's repeated rejection for filing a civil complaint for legal malpractice. On three occasions, the complaint was rejected for failure to file in accordance with the court rules. On appeal, the Sixth Circuit stated that requiring a litigant to comply with local and state court rules does not deprive that litigant of his right to access to the courts. *Id.* citing *Brandenburg v. Beaman*, 632 F.2d 120 (10th Cir. 1980). "It is incumbent on litigants, even those proceeding pro-se, to follow the . . . rules of procedure." See *Id.* On this basis, the Sixth Circuit rejected the petition for writ of mandamus.

The Federal Rules of Civil Procedure also support the injunctions of the Ottawa and Allegan County Circuit Courts. Fed. R. Civ. P. 11 is similar to M.C.R. 2.114. In addition, Fed. R. Civ. P. 12(b)(6) permits a court to dismiss a claim sua sponte if there is a basis for dismissal that is sufficient from the plaintiff's pleadings. See *Tate v. Burke*,

[11] In fact, the cases cited in Argument VII of this brief and by Judge McKeague in the lower court's opinion show exactly the opposite. There is substantial authority for courts to place reasonable limitations on a party's ability to file litigation.

131 F.R.D. 363 (D.C. Cir. 1990). The sua sponte dismissal of a pro se complaint without providing plaintiff with an opportunity to be heard is well-established. See *Brown v. District Unemployment Compensation Board*, 411 F. Supp. 1001 (D.C. 1975). See also J. Moore, *Federal Practice*, Para. 0 60 [6] (2d ed. 1975).

Based upon this authority, Respondent had more than adequate legal grounds for requesting this relief from the Ottawa and Allegan County Circuit Courts. There is no basis to assert that Respondent violated any clearly established constitutional rights.

VI. PETITIONER'S PETITION FOR WRIT OF CERTIORARI IS FRIVOLOUS AND THIS COURT SHOULD AWARD COSTS TO THE RESPONDENT.

Subsection 2 of this Court's Rule 42 authorizes this Court to award damages and costs for filing a frivolous petition for writ of certiorari. It provides:

> "2. When a petition for writ of certiorari, an appeal, or an application for other relief is frivolous, the court may award the respondent or appellee just damages, single or double costs under Rule 43. Damages or costs may be awarded against the petitioner, appellant, or applicant, against the party's counsel, or against both the party and counsel."

This Court's Rule 43 also allows for the tax of printing costs for an appendix.

Petitioner's petition for writ of certiorari is frivolous. It is reflective of the at least 19 lawsuits that Petitioner has filed against the City of Holland and its officials. Responding to these frivolous lawsuits consumes precious public resources and the costs of having to respond to Petitioner's frivolous petition should be awarded to the Respondent.

Cunningham Dalman, P.C. is a private law firm that represents the City of Holland. For these types of matters, its hourly rate is $102.50. This is reasonable because it is actually below what is charged in this locality. Respondent estimates that approximately 20 hours of attorney fee time will be billed for the preparation of this brief in opposition to writ of certiorari. A total cost for attorney fees would be $2,050.00. It is anticipated that the copying costs for this appendix are $963.60. In total, $3,013.60 will be incurred to respond to this petition. Because of the petition's frivolous nature, Respondent requests that this Court award costs against Petitioner in the amount of $3,013.60.

CONCLUSION

Respondent respectfully requests that this Court deny Petitioner's Petition for Writ of Certiorari and award to Respondent $3,013.60 for Petitioner filing a frivolous petition.

Respectfully submitted,

CUNNINGHAM DALMAN, P.C.

Dated: February 17, 2005

RONALD J. VANDER VEEN
(P33067)
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App. 1

STATE OF MICHIGAN

IN THE COURT OF APPEALS

PAUL E. WABEKE, (PLAINTIFF IN PRO PER) (APPELLANT) v CITY OF HOLLAND, (DEFENDANT) (APPELLEE)	M.C.O.A. # 207260-C O.C.C.C.# 97-28451-CZ APPELLANT'S BRIEF

Since the plaintiff/appellant believes that the facts, statements, and averments contained within the APPELLANTS' BRIEF, along with the official records, speak adequately for themselves . . . and with the plaintiff being desirous of avoiding using the time of the court unnecessarily, the plaintiff/appellant hereby waives the right to ORAL ARGUMENT.

/s/ Paul E. Wabeke
(Paul E. Wabeke,
plaintiff in pro per/appellant)
PO Box # 1132 Holland, Mi. 49423

Dated: December 19, 1997

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I.

PRELIMINARY DISCUSSION

The plaintiff in pro per/appellant has a well-established history of filing litigations involving the City of Holland over a considerable period of time. More specifically, the legal actions pertain to unlawful actions within city government. In one such case, (O.C.C.C. # 91-15029-CZ), the official court files are over 15 inches thick . . . and has never once touched upon the merits or issues involved. That case embraces the well-documented, unlawful diversion of public funds to a (so-called) non-profit private corporation, as well as the equally unlawful exchange of (so-called) "surplus" municipal property to the same corporation without first offering the property to the public by means of sealed bids, as is required by Michigan statutes.

The instant case/appeal is rooted in a temporary injunctive order which the plaintiff/appellant was seeking, to restrain city officials from expending additional funds for costly feasability studies for a revamping of a city project known a [sic] Windmill Island, from a tourist attraction to an "authentic" dutch village, at an estimated cost of $44.9 million dollars (" . . . give or take 25% . . . " a remark by the city manager). The plaintiff sought the injunction in order for the issue to be submitted to a referrendum vote

by city residents. *That case was finally terminated by order dated August 15, 1997.*

Because the order being appealed is dated October 13,1997 . . . captioned *within the same case which was finally terminated on August 15, 1997*, as well as the fact that the instant action is a direct violation of the plaintiff in pro per/appellants' right to have due process of law (XIVTH AMENDMENT), the plaintiff/appellant (rightfully) brings on the appeal. For if the October 13th order was to stand, any future legal action contemplated against City of Holland would, in essence, be tried in court even before the case was filed.

The plaintiff/appellant (rightly) avers that the order, dated October 13, 1997, (the subject of appeal), represents a glaring, desparate *attempt* on the part of counsel for City of Holland to, once and for all, silence the plaintiff in his honorable, legitimate exposure of wrong-doing within the City of Hollands' governing body.

In further connection with the said Windmill Island project, the instant plaintiff is also in the process of filing a *citizens complaint* (not the initiation of a law suit per se), in accordance with M.C.R. # 6.101 (C) and the staff comments related thereto, alleging the well-documented, wrongful act of utilizing GENERAL FUNDS for the payment of the remaining maturities of REVENUE BOND SERIES 1988, totally contrary to Michigan Revenue Bond Act Of 1933 (ACT # 94).

Even though the Windmill Island project brought in total revenues, of $886,541.00 in FY 1995 and FY 1996, which constitutes a first lien on the revenue bonds, on July 1, 1997 the city transferred $68,415 out of the GENERAL FUND to pay the FY 1997 payment on the bonds, and has

gone on official record of intending to transfer a total of $406,869 from the GENERAL FUND to pay off the bonds by FY 2002-2003.

A glaring foot note to all of this is the fact that the project for which the bonds were sold in 1988 *HAS NEVER BEEN BUILT.*

II.

INDEX OF AUTHORITIES

BLACKS' LAW DICTIONARY (re FINAL ORDER):

> "One which *terminates* the litigation between the parties and the merits of the case, *and leaves nothing to be done but to enforce by execution what has been determined."*
>
> (emphasis by plaintiff)
>
> Richardson v Jones, CA Pa, 551 F 2d 918, 921

****

XIV TH AMENDMENT TO THE U.S. CONSTITUTION re: DUE PROCESS OF LAW.

III.

STATEMENT OF THE BASIS FOR JURISDICTION

This appeal, by right, is presented pursuant to M.C.R. # 7.203 (A)-(1).

The order, which is the subject of the instant appeal, is a "final" order of the dismissal of O.C.C.C. file # 97-28451, which was dated October 13, 1997.

The plaintiff/appellants' CLAIM OF APPEAL (BY RIGHT) was filed with the Clerk of Michigan Court Of Appeals on October 29, 1997.

IV.

STATEMENT OF QUESTIONS

QUESTION # 1

Since it is most obvious that a final order or judgment which dismisses a case is a *termination* of the case, was it proper for defendant/appellee to file a brand new motion, *captioned within the same case which was finally terminated on August 15, 1997.*

The most logical and obvious answer is *NO.*

QUESTION # 2

Since the XIVth Amendment to the U.S. Constitution guarantees a citizen the right to have due process of law, was it proper and legal for a permanent injunction to be placed against the plaintiff/appellant, which would preclude the Ottawa County Clerk to file any litigation without a complaint being first reviewed by a circuit judge?

The obvious answer is *NO.* . . . for if this order was to stand, in true essence, a case would be tried even before it was filed.

QUESTION # 3

Since the plaintiff/appellant' dire indigency is well-known in the community, which has seen the granting of numerous

waivers of fees in various courts, including The Michigan Court Of Appeals, was it proper and just for the circuit judge to require receipt evidencing payment of prior costs imposed upon plaintiff in favor of defendant? The reasonable answer is obviously NO . . . for even in the case *finally terminated on August 15th*, the order of October 13th (wrongly) assessed $500.00 costs against plaintiff.

QUESTION # 4

Since the order, dated *August 15, 1997* was a *final termination of the case,* why, in the order *dated October 13,1997*, did the order state:

1. "That the complaint of the plaintiff is hereby dismissed . . . ", especially since the case was already actually dismissed on August 15th?

The plain and simple answer demonstrates a desparate *attempt* to, once and for all, silence the plaintiff in his lawful pursuit of the exposure of well-documented wrongdoing within the governing body of the City of Holland.

V.

STATEMENT OF FACTS

a). This is a civil action, centered in Ottawa County Circuit Court (# 97-28451-CZ).

b). The appeal is seeking a (proper and legitimate) invalidation of the order, dated *October 13, 1997*, which was entered *AFTER THE FINAL TERMINATION OF THE CASE IN WHICH THE INSTANT CASE WAS CAPTIONED.*

c). The basic facts in controversy resides in the order, *dated October 13, 1997*, which involved a motion for a permanent injunctive order to restrain plaintiff from filing any further litigation without the approval of a circuit judge. The order is actually invalid because it was filed and captioned within the same case *which was finally terminated* on August 15, 1997. Additionally, the order is invalid because, on its face the October 13, 1997 order is a direct violation of the plaintiffs' right to have due process of law under the XIVth Amendment to the U.S. Constitution . . . for if the October 13th order was to stand, a matter would, in true essence, be tried in court even before the case was filed.

d). Dates of important instruments and events:

Final termination of O.C.C.C.# 97-28451-CZ *August 15, 1997.*

Date of order, captioned in the same case which had already been terminated (which is the subject of the appeal: *October 13, 1997.*

e). Verdict and judgment:

On October 13, 1997 the presiding judge abused his judicial power by entering the order which was captioned in the same case *which was finally terminated on August 15, 1997.* During a hearing in said regard, the plaintiff voiced his vigorous objections to the order signed after the final termination of the case.

VI.

LAW/ARGUMENT

Based upon the facts, statements and averments contained within this brief, the plaintiff in pro per/appellant believes that a (proper) solution to the matter at hand, involving specifically the order dated October 13, 1997, is actually a rather plain and simple matter. For when a case is *finally terminated and dismissed* " . . . and leaves nothing to be done but to enforce by execution what has been determined", it certainly means just that.

Even if one were to try to ignor the allegations with regards to the violation of the XIVth Amendment to the U.S. Constitution regarding a citizens' right to have due process of law, the very fact that the order, dated October 13, 1997, was signed and entered 2 months *AFTER* the case had already been officially dismissed and terminated on August 15, 1997 is actually all that is required to invalidate the order dated October 13, 1997

With these facts and circumstances on record, the plaintiff/appellant respectfully avers that it is indeed encumbent upon the court for an immediaete invalidation of the order of October 13, 1997, thereby rendering the said order to be of no binding force or legal efficacy.

VII.

RELIEF SOUGHT

In a true spirit of justice and equity, and based upon the various facts and statements as are averred in the brief, the plaintiff in pro per/appellant respectfully prays that the court will invalidate the order, signed by Ottawa County Circuit Court Judge Calvin L. Bosman, dated

October 13, 1997, leaving the said order thereby to be of no binding force or legal efficacy.

Additionally, the plaintiff/appellant prays that, caused by the untenable circumstances detailed within, he is fully entitled to a fair and reasonable assessment of costs against defendant in favor of the plaintiff, which the plaintiff/appellant has (unnecessarily) incurred because of this appeal., pursuant to, and in accordance with M.C.R.7.219 (F).

RECEIPT FOR THE HAND-DELIVERY OF LEGAL DOCUMENTS

I, Paul E. Wabeke, personally hand-delivered a true copy of the following legal documents to the office of Andrew J. Mulder, located at 321 Settlers Road, Holland, Mi.:

1. APPELLANTS' BRIEF.
2. PROOF OF SERVICE.

/s/ Paul E. Wabeke
(Paul E. Wabeke,
plaintiff in pro per/appellant)
PO Box # 1132 Holland, Mi. 49423

RECEIVED ON BEHALF OF DEFENDANT/APPELLEE CITY OF HOLLAND/ANDREW J. MULDER:

RECEIVED BY: _____

TITLE: _____

DATE OF HAND-DELIVERY: _____

_____

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

PAUL E. WABEKE, Plaintiff v. CITY OF HOLLAND, Defendant.	File No. 97-28451-CZ Honorable Calvin L. Bosman, Assigned Judge JUDGMENT FOR DISMISSAL, PERMANENT INJUNCTION, AND AWARD OF COSTS

Paul E. Wabeke, Plaintiff
In Pro Per
PO Box 1132
Holland, MI 49422-1132

Andrew J. Mulder P 26280
CUNNINGHAM DALMAN, P.C.
attorneys for Defendant
321 Settlers Road
Holland, MI 49423
616-392-1821

At a session of the above Court, held in the City of Grand Haven, County of Ottawa, State of Michigan, on this 13th day of October, 1997.

PRESENT: Honorable Calvin L. Bosman
Circuit Court Judge

This cause coming on to be heard pursuant to the Motion of the Defendant, City of Holland, pursuant to MCR 2.116(C)(8) seeking to dismiss the Complaint of the Plaintiff for failure to state a cause of action; requesting the issuance of a permanent injunction pursuant to MCR 2.114(E); and the award of costs for frivolous and vexatious proceedings by the Plaintiff; the Court having

reviewed the Motion and Brief filed by the Defendant, the response of the Plaintiff, the oral arguments of the Plaintiff and the Defendant, and the Court having rendered its verbal opinion on September 8, 1997;

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. That the Complaint of the Plaintiff is hereby dismissed, with prejudice, pursuant to MCR 2.116(C)(8) for failure of the Plaintiff to state a cause of action.

2. That a permanent injunction is hereby issued precluding the Ottawa County Clerk from accepting any litigation filed by the Plaintiff against the Defendant, City of Holland, any of its officials or any of its agents who have acted in their capacity as agents or officials for the City of Holland until the complaint of the Plaintiff has been reviewed by a circuit judge for the County of Ottawa for compliance with MCR 2.114(D) and upon receipt or evidence of a receipt to the Ottawa County Clerk evidencing payment of all costs in any proceeding previously imposed against the Plaintiff and in favor of the Defendant. Specifically excepted from this permanent injunction is any cause of action by the Plaintiff which cites a personal injury arising from the tortious conduct by the Defendant, its officials, or agents, which results in personal injury to the Plaintiff himself or to any of his property.

3. That costs are assessed in the amount of $500 against the Plaintiff and in favor of the Defendant in this cause.

/s/ Calvin L. Bosman
Calvin L. Bosman,
Circuit Court Judge

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PAUL E. WABEKE, Plaintiff,	)	Case No. 1:03-cv-221
v.	)	Honorable David W. McKeague
ANDREW J. MULDER, et al.,	)	**MEMORANDUM OPINION**
Defendants.	)	

This is a civil action brought by a *pro se* plaintiff. Plaintiff seeks an order from this court overturning injunctions issued against him by state court judges in an effort to deter plaintiff from filing frivolous lawsuits. Plaintiff named as defendants Ottawa County Circuit Court Judge Calvin Bosman; Allegan County Circuit Court Judge Harry Beach; and Holland, Michigan's City Attorney, Andrew J. Mulder. Defendants Bosman and Beach issued the injunctions. Attorney Mulder defended the City of Holland in the two lawsuits in which the state courts found that injunctive relief against plaintiff was warranted.

Plaintiff filed this lawsuit on April 3, 2003. On May 15, 2003, the court granted a motion to dismiss filed by Judges Bosman and Beach, dismissing plaintiff's claims against them with prejudice. (docket # 33).[1] On May 20,

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[1] Plaintiff did not proceed *in forma pauperis*, therefore, his complaint was not subject to initial screening.

2003, defendant Mulder filed a motion to dismiss. (docket # 38). The court issued an order notifying plaintiff of his opportunity to respond to defendant's motion. (docket # 41). Plaintiff has filed his response (docket # 42, 44) and the matter is ready for decision. For the reasons set forth herein, defendant's motion to dismiss will be granted.

Applicable Standard

Federal courts are courts of limited jurisdiction which may exercise only those powers authorized by Constitution and statute. *Kokkonen v. Guardian Life Ins. Co. of America,* 511 U.S. 375, 377 (1994). Therefore, "[i]t is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkonen,* 511 U.S. at 377 (citations omitted). The first and fundamental question presented by every case brought to the federal district court is whether it has jurisdiction to hear a case, even where the parties concede or do not raise or address the issue. *See Bender v. Williamsport Area Sch. Dist.,* 475 U.S. 534, 541 (1986). "Quite aside from whether the parties raise jurisdictional issues themselves – or even attempt to consent or agree to federal jurisdiction – federal courts have an independent obligation to investigate and police the boundaries of their own jurisdiction." *Douglas v. E.G. Baldwin Assoc., Inc.,* 150 F.3d 604, 606 (6th Cir. 1998).

Plaintiff has the burden of proving this court's subject matter jurisdiction. *See Nichols v. Muskingum College,* 318 F.3d 674, 677 (6th Cir. 2003); *Angel v. Kentucky,* 314 F.3d 262, 264 (6th Cir. 2002); *Moir v. Greater Cleveland Reg'l Transit Auth.*, 895 F.2d 266, 269 (6th Cir. 1990).

Defendant's motion seeks dismissal pursuant to Fed. R. Civ. P 12(b)(1). The Sixth Circuit recognizes two types of 12(b)(1) motions: a "facial" attack challenging the sufficiency of the plaintiff's factual allegations, in which all well-pleaded factual allegations in the complaint are taken as true; and a "factual" attack challenging the actual fact of subject-matter jurisdiction, which is analyzed under Fed. R. Civ. P. 56 standards. *See Nichols,* 318 F.3d at 677; *Ohio Nat'l Life Ins. Co. v. United States*, 922 F.3d 320, 324 (6th Cir. 1990). The difference is often significant, because under a factual challenge the district court is empowered to weigh the evidence, and no presumptions apply as to the truthfulness of plaintiff's allegations. *See United States v. A.D. Roe Co.,* 186 F.3d 717, 721-22 (6th Cir. 1999). The Sixth Circuit has clearly recognized that a district court is empowered to consider evidence beyond the pleadings and to resolve factual disputes when necessary to resolve challenges to subject-matter jurisdiction under Rule 12(b)(1). *See Nichols,* 318 F.3d at 677; *Madison-Hughs v. Shalala,* 80 F.3d 1121, 1130 (6th Cir. 1996); *RMI Titanium Co. v. Westinghouse Elec. Co.*, 78 F.3d 1125, 1133-34 (6th Cir. 1996). Here, defendant makes a factual attack.

Facts

In 1997, plaintiff filed a lawsuit in Ottawa County Circuit Court against the City of Holland. Ottawa County Circuit Court Judge Calvin L. Bosman was the presiding judge. On October 13, 1997, Judge Bosman entered a "Judgment for Dismissal, Permanent Injunction and Award of Costs." *See Wabeke v. City of Holland,* No. 97-28451-CZ (Ottawa County Circuit Court Oct. 13, 1997). (Complaint, Ex. O). Judge Bosman dismissed plaintiff's

complaint for failure to state a claim and assessed costs against plaintiff in the amount of $500. Judge Bosman issued the following injunction:

> [A] permanent injunction is hereby issued precluding the Ottawa County Clerk from accepting any litigation filed by Plaintiff against the Defendant, City of Holland, any of its officials or any of its agents who have acted in their capacity as agents or officials for the City of Holland until the complaint of the Plaintiff has been reviewed by a circuit judge for the County of Ottawa for compliance with MCR 2.114(D) and upon receipt or evidence of a receipt to the Ottawa County Clerk evidencing payment of all costs in any proceeding previously imposed against the Plaintiff and in favor of the Defendant. Specifically excepted from this permanent injunction is any cause of action by the plaintiff which cites a personal injury to the Plaintiff or to any of his property.

(Complaint, Ex. O).

Plaintiff sought review of Judge Bosman's decision in the Michigan Court of Appeals. *See Wabeke v. City of Holland,* No. 207260, 1999 WL 33453855 (Mich. Ct. App. Feb. 23, 1999). The Court of Appeals rejected plaintiff's claims that Judge Bosman had abused his discretion and exceeded his authority by entering the order dismissing the case and imposing sanctions. 1999 WL 33453855, at *1. The Michigan Court of Appeals found that plaintiff's history of abusive lawsuits warranted the injunctive relief ordered by Judge Bosman.

> The trial court did not clearly err in determining that sanctions were warranted, and did not abuse its discretion by imposing costs in the

> amount of $500 and by enjoining the circuit court clerk from accepting any furthe pleadings from plaintiff without prior approva from a circuit court judge. The trial court found that plaintiff signed the instant complaint in violation of MCR 2.114(D). This suit was the 17th action filed by plaintiff[2] against defendant and other parties since 1979. All previous actions were dismissed. Sanctions were imposed in several cases; however, plaintiff did not pay as ordered. Plaintiff was afforded due process in connection with the imposition of sanctions. *See People v. Herrara (On Remand),* 204 Mich App 333, 339; 514 NW2d 543 (1994). Plaintiff's documented history of filing frivolous actions and ignoring orders warranted imposition of sanctions designed to prevent such actions in the future.

1999 WL 33453855, at *1. Plaintiff does not allege and has not shown that he sought leave to appeal this decision to the Michigan Supreme Court or that he petitioned the United States Supreme Court for a writ of certiorari seeking review of Judge Bosman's injunction.

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[2] Plaintiff's prolific litigation activities included multiple lawsuits in this court. *See Wabeke v. Maatman, et al.,* No. 1:91-cv-355 (W.D. Mich. May 30, 1991), *aff'd,* No. 91-1800, 1992 WL 58977, at *1 (6th Cir. Mar. 26, 1992) (*res judicata* barred plaintiff's attempt to assert a cause of action arising out of ten state court lawsuits and seeking eleven million dollars in damages, declaratory relief, and a full-page written apology from defendants to be printed in the local newspaper), *cert. denied,* 506 U.S. 1072 (1993); *Wabeke v. Mulder,* No. 1:92-cv-200 (W.D. Mich. Apr. 22, 1994) (dismissing plaintiff's complaint for failure to state a claim); *Wabeke v. Mulder, et al.,* 4:95-cv-127 (W.D. Mich. Aug. 25, 1995) (granting defendants' motions to dismiss), *aff'd,* No. 95-2099, 1996 WL 571302 (6th Cir. Oct. 4, 1996) (affirming dismissal of plaintiff's claims that Judge Bosman and City Attorney Mulder had conspired to deprive plaintiff of due process of law in his state court suit against the City of Holland as barred by the *Rooker-Feldman* doctrine).

The City of Holland is located within both Ottawa and Allegan Counties. In 2002, plaintiff filed another lawsuit against the City of Holland, this time in the Allegan County Circuit Court. On May 7, 2002, Allegan County Circuit Court Judge Harry A. Beach entered a "Judgment for Defendant for Summary Disposition, Permanent Injunction and Award of Costs." *See Wabeke v. City of Holland,* No. 02-31220-CZ (Allegan County Circuit Court May 7, 2002) (Complaint, Ex. P). Plaintiff does not allege that he sought appellate review of this decision in either Michigan's appellate courts or in the United States Supreme Court.

Plaintiff filed this lawsuit on April 3, 2003.

Discussion

As plaintiff is well aware, this court does not possess direct oversight powers over state courts. It is patent that this court lacks jurisdiction to review the state-court decisions[3] plaintiff attempts to challenge in this lawsuit.

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[3] The right of access to courts is neither absolute or unconditional, and there is no right of access to the courts to prosecute an action that is frivolous and malicious. *See Tripati v. Beaman,* 878 F.2d 351, 353 (10th Cir. 1989). The injunctions imposed by the state courts are consistent with those issued by federal courts under similar circumstances. *See, e.g., Sassower v. American Bar Ass'n,* 33 F.3d 733, 736 (7th Cir. 1994) (court review and approval before acceptance of any proposed future filings by plaintiff); *United States ex rel. Verdone v. Circuit Court for Taylor County,* 73 F.3d 669, 675 (7th Cir. 1995) (requiring plaintiff to pay all costs and attorney's fees imposed and to post a bond before allowing plaintiff to file another civil lawsuit against defendants); *see also Callihan v. Kentucky,* No. 01-6555, 2002, at * (6th Cir. June 12, 2002) (upholding injunction imposing prefiling restrictions); *Stewart v. Fleet Fin.,* No. 99-2282, 2000 WL 1176881, at *2 (6th Cir. Aug. 10, 2000) (affirming this court's order requiring plaintiff to file

(Continued on following page)

See District of Columbia Circuit Court of Appeals v. Feldman, 460 U.S. 462, 483 n.16 (1983); *Rooker v. Fidelity Trust Co.,* 263 U.S. 413, 415-16 (1923); *United States v. Owens,* 54 F.3d 271, 274 (6th Cir. 1995); *see also Warren v. Garn,* No. 02-1658, 2002 WL 31809068, at *1 (6th Cir. Dec. 12, 2002); *Kovats v. Hi-Lex Corp.,* No. 02-1318, 2002 WL 31780951, at *2 (6th Cir. Dec. 11, 2002); *Metropolitan Life Ins. Co. v. Brown,* No. 02-3318, 2002 WL 31012126, at *1 (6th Cir. Sept. 6, 2002).

"The *Rooker-Feldman* doctrine . . . holds that lower federal courts lack subject matter jurisdiction to engage in appellate review of state court proceedings or to adjudicate claims 'inextricably intertwined' with issues decided in state court proceedings." *Peterson Novelties, Inc. v. City of Berkley,* 305 F.3d 386, 390 (6th Cir. 2002). Plaintiff certainly disagrees with arguments Attorney Mulder made in state court and believes that Mulder mislead the state court judges. The Michigan Court of Appeals rejected plaintiff's arguments and found that the injunctive relief ordered by Judge Bosman was appropriate given plaintiff's history of litigation abuses. Plaintiff apparently elected not to seek state court appellate review of Judge Beach's decision. Plaintiff's claims against defendant Mulder are inextricably intertwined with the state court judgments. *See Pieper v. American Arbitration Ass'n, Inc.,* No. 01-4043, ___ F.3d ___, 2003 WL 21663246, at *2 (6th Cir. July 11, 2003) ("When granting relief on the federal claim would imply that the state-court judgment on other issues was incorrect, federal courts do not have jurisdiction. . . ."); *see also Baker v. Michigan Family Independence*

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a $25,000 cash bond and other restrictions in any future action against defendants).

Agency, No. 03-1022, 2003 WL 21674747, at *1 (6th Cir. July 16, 2003); *Riser v. Franklin County Court of Common Pleas,* No. 02-4309, 2003 WL 21774011, at *1 (6th Cir. July 30, 2003) (district court properly found plaintiff's claims barred by the *Rooker-Feldman* doctrine because he sought to relitigate his prior state court actions, even though his intent to do so was veiled by nominal allegations of constitutional violations); *Akers v. Bishop,* No. 02-6235, 2003 WL 21019171, at *2 (6th Cir. May 2, 2003).

Conclusion

For the reasons set forth herein, defendant's motion will be granted and plaintiff's complaint dismissed for lack of subject matter jurisdiction.

Dated: August 18, 2003

/s/ David W. McKeague
David W. McKeague
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PAUL E. WABEKE, Case No. 4:95-CV-127

Plaintiff, HON. DOUGLAS W. HILLMAN

-vs-

ANDREW J. MULDER and JUDGE CALVIN L. BOSMAN,

Defendants. /

OPINION

Before the court in this 42 U.S.C. § 1983 action are defendants' motions to dismiss and plaintiff's motion for summary judgment. Plaintiff Paul E. Wabeke alleges defendants violated his civil rights in a lawsuit he brought against the City of Holland. Defendant Andrew J. Mulder, an attorney, represented the City of Holland. Defendant Judge Calvin L. Bosman heard and decided the case. For the reasons stated below, defendants' motions to dismiss are GRANTED. Plaintiff's motion for summary judgment is DENIED AS MOOT.

FACTS

This case revolves around several procedural issues in an underlying state lawsuit, *Wabeke v. Holland,* Circuit Court No. 91-15029-CZ. In that case, Wabeke sued the City of Holland ("City"). The case was assigned to Judge Bosnian. Shortly after the case was filed, Wabeke entered

a Notice of Default pursuant to MCR 2.603 on the grounds that the City had failed to respond to interrogatories in a timely manner. Wabeke also moved to disqualify Judge Bosman. At approximately the same time, Mulder, on behalf of the City, moved for a bond as security for costs. Mulder stated that Wabeke, a frequent pro se filer, had paid only $57.02 toward $2,367.84 costs awarded the City in a previous lawsuit between the parties. Wabeke does not contest these figures.

Judge Bosman granted the City's motion, and required Wabeke to post a bond as security for costs. Judge Bosman also refused to disqualify himself. When Wabeke failed to post a bond, Judge Bosman dismissed the case, despite Wabeke's objection that the notice of default prevented this action.

Wabeke appealed the dismissal. While the appeal was pending, Wabeke filed suit in this court against Mulder alleging a violation of his due process rights. Judge Gibson, then Chief Judge, dismissed Wabeke's suit pursuant to *Younger v. Harris,* 401 U.S. 37 (1971), on the grounds of abstention. *Wabeke v. Mulder,* 1:92-cv-200 (W.D. Mich. February 24, 1994).

Subsequently, the Michigan Court of Appeals reversed Judge Bosman, holding that the circuit court violated MCR 2.603(A)(3) when it permitted the City to proceed with its case while the notice of default was in place. The Court of Appeals remanded the case for a determination of whether the default should be set aside. *Wabeke v. City of Holland,* No. 158981 (Mich. Ct. App. August 23, 1994).

On remand, Wabeke argued the default could not be set aside without an award of costs pursuant to MCR 2.603(D)(4). However, Judge Bosman set aside the default

without an award of costs, and again required Wabeke to post a bond. When Wabeke failed to do so, Judge Bosman dismissed the case. In his present complaint, Wabeke states he is in the process of preparing documents to appeal the dismissal of the case to the Michigan Court of Appeals. Complaint, at ¶ 49.

Based on the foregoing, Wabeke alleges Judge Bosman and Mulder conspired to use court procedures to "bury" the merits of the underlying action. Proceeding pro se, Wabeke seeks $5,000,000 in damages.

DISCUSSION

Defendant Mulder's Motion to Dismiss

Wabeke's complaint against Mulder rests on allegations that during the course of the litigation in Case No. 91-15029-CZ, Mulder: (1) brought a motion seeking a bond as security for costs pursuant to MCR 2.109; (2) argued that the default which Wabeke filed when the City failed to respond to interrogatories in a timely manner should be set aside; and (3) argued that plaintiff should not be awarded costs pursuant to MCR 2.603(D) (4), because plaintiff had neglected to move for an order compelling discovery pursuant to MCR 2.313(A) when the City failed to respond to Wabeke's interrogatories.

As Judge Gibson noted in his opinion, federal courts should abstain from hearing "challenges to a state's exercise of its jurisdiction in civil cases if the state's interest is so important that exercising federal jurisdiction would disrupt the comity between federal and state courts." *Mann v. Conlin,* 22 F.3d 100, 105 (6th Cir.), *cert. denied,* 115 S. Ct. 193 (1994) (citing *Pennzoil Co. v. Texaco,*

Inc., 481 U.S. 1 (1987)). In deciding whether to abstain, the Sixth Circuit has directed district courts to examine three factors. The first is whether state proceedings are pending. The second is whether the state proceedings involve an important state interest. The third is whether the state proceedings will afford the plaintiff an adequate opportunity to raise the constitutional claim at issue. *Mann*, 22 F.3d at 105 (citing *Nilsson v. Ruppert Bronson & Chicarelli Co.*, 888 F.2d 452, 454 (6th Cir. 1989)).

With regard to the first factor, plaintiff represents that state proceedings are in fact currently pending. He states that Judge Bosman has issued an order dismissing Circuit Court Case No. 91-15029-CZ, and that Wabeke is in the process of perfecting an appeal.

With regard to the second factor, it is clear that the state proceedings involve an important state interest. The Sixth Circuit has held that a state has an important interest in the proper operation of its judicial system, and that a plaintiff's allegation of conspiracy to deprive him of his legal rights goes to the heart of that interest. *See Nilsson*, 888 F.2d at 454.

With regard to the third factor, it is clear that the Michigan Court of Appeals will afford Wabeke an opportunity to raise the due process claims he alleges. The Michigan Court of Appeals has already granted plaintiff relief on one aspect of his claim.

For these reasons, I conclude that abstention is warranted. Therefore, Defendant Mulder's motion to dismiss on the basis of abstention is GRANTED.

Judge Bosman's Motion To Dismiss

Turning to Judge Bosman's motion to dismiss, Wabeke's complaint rests on allegations that during the course of the litigation in Case No. 91-15029-CZ, Judge Bosman: (1) improperly refused to disqualify himself; (2) continued to issue orders while an MCR 2.603(A)(1) default was in place, violating MCR 2.603(A)(3); (3) set aside the default without awarding costs; and (4) unfairly dismissed plaintiff's lawsuit for failure to post a security bond.

Judges are absolutely immune from monetary damages under section 1983 for their official acts so long as: (1) the judge had subject matter jurisdiction over the case at issue, and (2) the actions taken by the judge were judicial actions. *Stump v. Sparkman,* 435 U.S. 349 (1978); *Pierson v. Ray,* 386 U.S. 547 (1967); *Castorr v. Brundage,* 674 F.2d 531, 537 (6th Cir.), *cert. denied,* 459 U.S. 928 (1982). This immunity applies even where a judge is accused of acting maliciously or corruptly. *Stump,* 435 U.S. at 356.

Here, there is no question of jurisdiction. Plaintiff, who filed the underlying action in 20th Circuit Court, nowhere alleges the circuit court was without jurisdiction. In Michigan, the circuit court is a trial court of general jurisdiction. Mich. Const. Art. IV, § 1. Further, it is clear that Judge Bosman's acts were judicial in nature. The parties dealt with Judge Bosnian in his judicial capacity, and Judge Bosman's acts were functions normally performed by a judge.

An action must be dismissed if the complaint fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). Plaintiff can prove no set of facts which would

entitle him to relief. *See Conley v. Gibson,* 355 U.S. 41, 45-46 (1957). For these reasons, defendant Judge Bosman's motion to dismiss on the grounds of judicial immunity is GRANTED.

Plaintiff's Motion for Summary Judgment

While the above motions were pending before the court, Wabeke filed a motion for summary judgment as to both defendants. Plaintiff bases his motion on the fact that neither defendant filed an answer to his complaint within 20 days of service as required by Fed. R. Civ. P. 12(a).

Defendants were served on July 17, 1995. Pursuant to Fed. R. Civ. P. 6, the 20-day period began to run on July 18, 1995. Because a period cannot end on a Saturday, Sunday, or legal holiday, defendants had until August 7, 1995, to respond. Both defendants filed motions by August 7, 1995, pursuant to Fed. R. Civ. P. 12(b)(6),

It is appropriate to file a Rule 12(b)(6) motion prior to answering the complaint. A responsive pleading is not required to be served until 10 days following a court's denial of the motion. Rule 12(a) (4) (A) .

Consequently, plaintiff's motion for summary judgment is wholly without merit. In light of the disposition of defendants' motions to dismiss, plaintiff's motion for summary judgment is DENIED AS MOOT.

CONCLUSION

For the reasons stated above, Defendant Mulder's motion to dismiss is GRANTED, Defendant Judge Bosman's motion to dismiss is GRANTED, and Plaintiff

Wabeke's motion for summary judgment is DENIED AS MOOT.

/s/ Douglas W. Hillman
Douglas W. Hillman
Senior District Judge

Dated: AUG 25 1995

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PAUL E. WABEKE,

Plaintiff,

-vs-

ANDREW J. MULDER and JUDGE CALVIN L. BOSMAN,

Defendants. /

Case No. 4:95-CV-127

HON. DOUGLAS W. HILLMAN

ORDER

In accordance with the opinion filed this date,

IT IS **ORDERED** that defendant Mulder's motion to dismiss is **GRANTED.**

IT IS **FURTHER ORDERED** that defendant Bosman's motion to dismiss is **GRANTED.**

IT IS **FURTHER ORDERED** that plaintiff's motion for summary judgment is **DENIED** as moot.

IT IS **FURTHER ORDERED** that this case is hereby dismissed.

/s/ Douglas W. Hillman
Douglas W. Hillman
Senior District Judge

Dated: Aug. 25, 1995.

PAUL E. WABEKE, Plaintiff-Appellant, v CITY OF HOLLAND, Defendant-Appellee.
No. 207260

COURT OF APPEALS OF MICHIGAN

1999 Mich. App. LEXIS 378

February 23, 1999, Decided

NOTICE:

IN ACCORDANCE WITH THE MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

JUDGES: Before: McDonald, P.J., and Hood and Doctoroff, JJ.

OPINION:

MEMORANDUM.

Plaintiff appeals of right from the trial court order granting defendant's motion for summary disposition and issuing a permanent injunction regarding his filing of further litigation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed an action for injunctive relief seeking to preclude defendant from expending public monies for a certain project. The complaint was the 17th action filed by plaintiff against defendant and other parties since 1979. The trial court denied plaintiff's motion for a preliminary injunction.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(8), and sought dismissal of the action for the reason that the complaint did not allege that plaintiff

would suffer damage as a taxpayer as a result of defendant's actions. In addition, defendant sought entry of a permanent injunction precluding the circuit court clerk from accepting further pleadings from plaintiff absent prior determination that the verification requirements of MCR 2.114 had been met. The trial court granted the motion for summary disposition and dismissed the complaint. The trial court granted the request for injunctive relief, but excepted any action alleging a personal injury resulting from tortious conduct by defendant or defendant's agents from the requirement that any pleadings filed by plaintiff must be found to be in compliance with MCR 2.114. Finally, the trial court assessed costs in the amount of $500.

On appeal plaintiff, acting in propria persona, argues that the trial court abused its discretion and exceeded its authority by entering the order dismissing the case and imposing sanctions. We disagree and affirm. Entry of the order denying plaintiff's motion for a preliminary injunction did not terminate the case. An order denying a motion for a preliminary injunction is not a decision on the merits of the case. MCR 3.310(A)(2); *Kuizema v. Breen,* 316 Mich 492, 496; 25 NW2d 596 (1947). The order dismissing the complaint constituted the final order in this case.

If a trial court determines that a pleading has been signed in violation of MCR 2.114, imposition of a sanction is mandatory. The determination of an appropriate sanction is within the discretion of the trial court. MCR 2.114(E). We review a trial court's decision regarding the imposition of sanctions to determine if it is clearly erroneous. *Schadewald v. Brule,* 225 Mich App 26, 41; 570 NW2d 788 (1997).

The trial court did not clearly err in determining that sanctions were warranted, and did not abuse its discretion by imposing costs in the amount of $500 and by enjoining the circuit court clerk from accepting any further pleadings from plaintiff without prior approval from a circuit court judge. The trial court found that plaintiff signed the instant complaint in violation of MCR 2.114(D). This suit was the 17th action filed by plaintiff against defendant and other parties since 1979. All previous actions were dismissed. Sanctions were imposed in several cases; however, plaintiff did not pay as ordered. Plaintiff was afforded due process in connection with the imposition of sanctions. See *People v. Herrara (On Remand),* 204 Mich App 333, 339; 514 NW2d 543 (1994). Plaintiff's documented history of filing frivolous actions and ignoring orders warranted imposition of sanctions designed to prevent such actions in the future.

Affirmed.

/s/ Gary R. McDonald

/s/ Harold Hood

/s/ Martin M. Doctoroff

NOT RECOMMENDED FOR FULL-TEST PUBLICATION

Sixth Circuit Rule 28(g) limits citation to specific situations. Please see Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit, if cited, a copy must be served on other parties and the Court.

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No. 03-2235

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PAUL E. WABEKE, Plaintiff-Appellant, v. ANDREW J. MULDER, Defendant-Appellee. CALVIN L. BOSMAN, Judge and HARRY BEACH, Judge, Defendants.	)	ORDER (Filed Jun. 17, 2004)

Before: KRUPANSKY and COLE, Circuit Judges; COOK, District Judge.*

Paul E. Wabeke, a Michigan resident proceeding pro se, appeals a district court order dismissing his civil action that sought an order to overturn injunctions issued against him by two state court judges in an effort to deter

* The Honorable Julian A. Cook, Jr., United States District Judge for the Eastern District of Michigan, sitting by designation.

Wabeke from filing frivolous lawsuits. Wabeke has filed a motion for judgment on the pleadings. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Wabeke filed this lawsuit on April 3, 2003, against an Ottawa County Circuit Court Judge (Calvin L. Bosman), an Allegan County Circuit Court Judge (Harry Beach), and a Holland, Michigan City Attorney (Andrew J. Mulder). Defendants Bosman and Beach issued injunctions against Wabeke. Attorney Mulder defended the City of Holland in two lawsuits in which the state courts found that injunctive relief against Wabeke was warranted.

On May 15, 2003, the district court granted a motion to dismiss filed by Judges Bosman and Beach, dismissing Wabeke's claims against them with prejudice. Thereafter, on May 20, 2003, defendant Mulder filed a motion to dismiss, to which Wabeke responded. The district court granted the defendant's motion and dismissed the action pursuant to the provisions of Fed. R. Civ. P. 12(b)(1), concluding that the court lacked subject matter jurisdiction over the claims asserted in the complaint. Wabeke has filed a timely appeal.

We review de novo a district court's decision to dismiss an action for lack of subject matter jurisdiction. *Friends of Crystal River v. United States EPA*, 35 F.3d 1073, 1077-78 (6th Cir. 1994); *Willis v. Sullivan*, 931 F.2d 390, 395 (6th Cir. 1991). "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Fed. R. Civ. P. 12(h)(3).

Upon review, we conclude that the district court properly dismissed Wabeke's complaint for lack of subject matter jurisdiction. Because Wabeke's complaint merely reflected his dissatisfaction with the permanent injunction issued by the state court regarding his filing of further litigation and essentially sought federal court review of that state court order, the *Rooker-Feldman* doctrine precludes the exercise of federal jurisdiction. *See Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486 (1983); *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 415-16 (1923). The *Rooker-Feldman* doctrine provides that federal district courts generally lack jurisdiction to review and determine the validity of state court judgments, even in the face of allegations that "the state court's action was unconstitutional." *Feldman*, 460 U.S. at 486; *see also Blanton v. United States*, 94 F.3d 227, 233-34 (6th Cir. 1996). Instead, review of final determinations in state judicial proceedings can be obtained only in the United States Supreme Court. 28 U.S.C. § 1257; *Feldman*, 460 U.S. at 476.

Accordingly, the district court's order is affirmed. The motion for judgment on the pleadings is denied. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER
OF THE COURT

/s/ Leonard Green
Clerk

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Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.

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No. 95-2099

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PAUL E. WABEKE, Plaintiff-Appellant, v. ANDREW J. MULDER, CALVIN L. BOSMAN, Judge, Defendants-Appellees.	)	ORDER (Filed Oct. 4, 1996)

Before: KENNEDY, DAUGHTREY, and WEIS*, Circuit Judges.

This pro se Michigan litigant appeals a district court order dismissing his civil rights complaint filed pursuant to 42 U.S.C. §§ 1983 & 1988. This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously

* "The Honorable Joseph F. Weis, Jr., Circuit Judge, United States Court of Appeals for the Third Circuit, sitting by designation.

agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking monetary and injunctive relief, Paul E. Wabeke sued the City Attorney for the City of Holland, Michigan (Andrew J. Mulder) and the Circuit Court Judge for Ottawa County, Michigan (Calvin L. Bosman) in their individual and official capacities. Wabeke claimed that the defendants conspired to deprive him of due process of law in his state court suit against the city of Holland.

The district court granted defendants' motion to dismiss filed pursuant to Fed. R. Civ. P. 12(b)(6) and denied Wabeke's motion for summary judgment. Wabeke appeals that judgment.

In his timely appeal, Wabeke reasserts the claim he set forth in the district court. In addition, an anonymous author moves to submit an amicus curiae brief, and Wabeke moves for sanctions and costs against defense counsel Douglas Van Essen.

Wabeke's claims are barred by the *Rooker-Feldman* doctrine. Federal courts do not have the authority to review final judgments of the state courts. *Rooker v. Fidelity Trust Co.,* 263 U.S. 413, 416 (1923); *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 486 (1983). Indeed, federal courts lack jurisdiction to engage in appellate review of state court determinations. *United States v. Owens,* 54 F.3d 271, 274 (6th Cir. 1995); *Ritter v. Ross*, 992 F.2d 750, 753 (7th Cir. 1993), *cert. denied,* 510 U.S. 1046 (1994). A party raising a federal question must appeal a state court decision through the state system and then directly to the Supreme Court of the United States. *Feldman*, 460 U.S. at 476. A district court engages in impermissible review when it is asked to entertain a claim

that was not argued in the state court but is nonetheless "inextricably intertwined" with the state court judgment. *Wright v. Tackett*, 39 F.3d 155, 157 (7th Cir. 1994) (citing *Ritter*, 992 F.2d at 753). Wabeke's claims are inextricably intertwined with the state court judgment.

Accordingly, we deny the motion by an anonymous author to submit an amicus curiae brief, deny Wabeke's motion for sanctions and costs, and affirm the district court's judgment. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER
OF THE COURT

/s/ Leonard Green
Clerk

Rule 2.114 Signatures of Attorneys and Parties; Verification; Effect; Sanctions

(A) Applicability. This rule applies to all pleadings, motions, affidavits, and other papers provided for by these rules. See *MCR 2.113(A)*. In this rule, the term "document" refers to all such papers.

(B) Verification.

(1) Except when otherwise specifically provided by rule or statute, a document need not be verified or accompanied by an affidavit.

(2) If a document is required or permitted to be verified, it may be verified by

(a) oath or affirmation of the party or of someone having knowledge of the facts stated; or

(b) except as to an affidavit including the following signed and dated declaration: "I declare that the statements above are true to the best of my information, knowledge, and belief." In addition to the sanctions provided by subrule (E), a person who knowingly makes a false declaration under subrule (B) (2)(b) may be found in contempt of court.

(C) Signature.

(1) Requirement. Every document of a party represented by an attorney shall be signed by at least one attorney of record. A party who is not represented by an attorney must sign the document.

(2) Failure to Sign. If a document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party.

(D) Effect of Signature. The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that

(1) he or she has read the document;

(2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and

(3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(E) Sanctions for Violation. If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.

(F) Sanctions for Frivolous Claims and Defenses. In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in *MCR 2.62(A)(2)*. The court may not assess punitive damages.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ALLEGAN

PAUL E. WABEKE, Plaintiff, vs. **CITY OF HOLLAND,** Defendant.	**Case No. 02-31220-CZ** **Hon. Harry A. Beach** **JUDGMENT FOR DEFENDANT FOR SUMMARY DISPOSITION, PERMANENT INJUNCTION, AND AWARD OF COSTS**

Paul E. Wabeke, In Pro Per
P.O. Box 1132
Holland, MI 49422-1132

Andrew J. Mulder P26280
P. Haans Mulder P61842
Cunningham Dalman, P.C.
Attorneys for Defendant
321 Settlers Road
Holland, Michigan 49423
(616)392-1821

At a session of the above Court, held in the City of Allegan, County of Allegan, State of Michigan, on this 17th day of May, 20002 [sic].

PRESENT: Honorable Harry A. Beach
Circuit Court Judge

This cause coming on to be heard pursuant to the Motion for Summary Disposition of the Defendant, City of Holland, pursuant to MCR 2.116(C)(8) seeking to dismiss the Complaint of the Plaintiff for failure to state a cause of action; requesting the issuance of a permanent injunction

pursuant to MCR 2.114(E); and the award of costs for frivolous and vexatious proceedings by the Plaintiff; the Court having reviewed the Motion and Brief filed by the Defendant, the response of the plaintiff, the oral arguments of the Plaintiff and the Defendant, and the Court having rendered its verbal opinion on April 26, 2002;

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. That the Complaint of the Plaintiff is hereby dismissed, with prejudice pursuant to MCR 2.116(C)(8) for failure of the Plaintiff to state a cause of action. The Court specifically finds that the Complaint filed by the Plaintiff is frivolous.

2. That a permanent injunction is hereby issued precluding the Allegan County Clerk from accepting any litigation filed by the Plaintiff against the Defendant, City of Holland, any of its officials or any of its agents who have aced in their capacity as agents or officials for the City of Holland until the Complaint of the plaintiff has been reviewed by the presiding judge for the County of Allegan for compliance with MCR 2.114(D) and upon receipt or evidence of a receipt to the Allegan County Clerk evidencing payment of all costs in any proceeding previously imposed against the Plaintiff and in favor of the Defendant. Specifically excepted from this permanent injunction is any cause of action by the plaintiff which cites a personal injury arising from the tortious conduct by the Defendant, its officials or agents, which results in personal injury to the Plaintiff himself or to any of his property.

3. That costs are assessed in the amount of $500 against the Plaintiff and in favor of the Defendant in this cause.

HARRY BEACH
Harry A. Beach,
Circuit Court Judge